

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

November 15, 2007

A meeting of the Board of Environmental Protection was held on Thursday, November 15, 2007 at the Holiday Inn / Ground Round, Augusta, Maine. Virginia Plummer, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler

Absent: Nancy Anderson and Elizabeth Ehrenfeld

<u>Staff:</u>	Bureau of Air Quality	Jon Voisine
	Bureau of Land and Water Quality	Jennifer Cayer
	Bureau of Land and Water Quality	James Cassida
	Bureau of Land and Water Quality	Dana Murch
	Bureau of Land and Water Quality	Jon Cullen
	Bureau of Land and Water Quality	Robin Clukey

Others: David Littell, Commissioner
Cindy Bertocci, BEP Executive Analyst
Peggy Bensinger, Assistant Attorney General
Jerry Reid, Assistant Attorney General
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 4:00 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner Littell reported the following:

Fuel Costs: The Governor has expressed concern about the cost of fuel oil and the low supply in New England. The state will be taking steps to help ensure that Maine people remain warm this winter including efforts to secure and open shelters for Maine citizens. Governor Baldacci has asked the Department to investigate other types of gas that may be less expensive. The Department is looking into gas with ethanol to help address this matter.

Board member Wing Goodale asked if fuel with ethanol produces more pollution.

Commissioner Littell explained that gasoline with ethanol does not comply with Maine's fuel requirements (MTBE ban and summer fuel specifications). Ethanol has increased as part of the reformulated gas (RFG) mix and is now a lower priced commodity. Maine may have enough VOC credits to allow for the use of ethanol gas blends – staff from the Department's Bureau of Air Quality are looking into this.

Board member Ernest Hilton asked why both gas types were not allowed.

Right now, either type of fuel can be available in Maine; however, use of ethanol during summer months would require additional research because of Maine's summer fuel specifications handling problems associated with separation from gasoline and water build-up in tanks – if not properly handled. In the winter and summer there can be ethanol.

Board member Nancy Ziegler asked if the Department expected to see an increase in purchase and use of outdoor wood boilers because of the increased cost of heating oil.

Commissioner Littell stated that he expects to see an increase in these units. The Department is implementing an educational outreach effort aimed at encouraging the use of natural gas to inform citizens about the benefits of converting home heating units to natural gas (e.g. monitor heating units).

Board Jurisdiction: The Department is reviewing an application for a large condominium project in Old Orchard Beach. This project was originally approved in 1988 as a phased development. Individuals that participated in the permit review in 1988 have written to request that the Board assume licensing jurisdiction over this next phase of the project. The preliminary determination is that the scope of the project does not meet the standards for Board jurisdiction.

B. COMMENTS FROM THE BEP CHAIR: None

C. EXECUTIVE ANALYST COMMENTS: None

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

Board voted (8-0-0-2) to approve consent agenda items number 2, 3 and 4 as presented, and to table item 1 for vote verification of Board member Gould's vote regarding the Consent Agreement with Larry and Gabrielle Beaulieu.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson and Elizabeth Ehrenfeld were absent.

1. BEP MINUTES – April 19, 2007 (approval)
2. BEP MINUTES – September 6, 2007 (approval)
3. BEP MINUTES – September 20, 2007 (approval)
4. BEP MINUTES – October 25, 2007 (approval)

The Board voted (8-0-0-2) to approve consent agenda items 5, 6, 7, and 8 as presented.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson and Elizabeth Ehrenfeld were absent.

5. K & M MOTORS, INC, Millinocket – Administrative Consent Agreement (BAQ)
6. VIC FIRTH MANUFACTURING, INC., Newport - Administrative Consent Agreement (BAQ)
7. MERCEDES BORROMEO, Bristol - Administrative Consent Agreement (BLWQ-LAND)
8. FREDERICK HOLLISTER, Raymond – Administrative Consent Agreement and Enforcement Order (BLWQ-LAND)

III. Regular Agenda

1. MESSALONSKEE STREAM HYDRO LLC / UNION GAS HYDRO PROJECT – WATERVILLE L-017585-33-D-N -- Petition by Douglas Watts for Revocation, Modification or Suspension (Vote on revised decision document)
Staff: Dana Murch, Bureau of Land and Water Quality

The Board voted (6-0-2-2) on a motion to approve the draft proposed decision document as written which denies the petition submitted by Douglas Watts to modify, suspend or revoke the 1995 Water Quality Certification issued for the Union Gas Hydro Project, owned by Messalonskee Stream Hydro LLC. The petition requested that the certification be modified to lower the licensed height of the dam to natural bedrock in order to provide for eel and fish passage. The Board voted pursuant to 38 M.R.S.A. Section 341-D(3) and 06-096 CMR Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, and Nancy Ziegler voted to support the motion. Board members Sue Lessard and Virginia Plummer abstained and Board members Nancy Anderson and Elizabeth Ehrenfeld were absent.

III. Regular Agenda (continued)

2. DAVID AND VALERIE HOFFMAN / Natural Resources Protection Act Department Permit Denial L-022943-4E-A-N for construction of pier, ramp and float (appeal by David and Valerie Hoffman)

Staff: John Cullen, Bureau of Land and Water Quality

Staff: Robin Clukey, Bureau of Land and Water Quality

The Board voted (3-5-0-2) on a motion to deny the appeal submitted by Robert Morin on behalf of David and Valerie Hoffman and affirm the Department's Order L-22943-4E-A-N denying the application to construct a permanent pier in Winter Harbor and amend the proposed order as follows: **Motion Failed**.

Page (3 of 6) Section 6.B. Existing Scenic, Aesthetic, Recreational or Navigational Uses: (second paragraph.)

The coastal wetland in this area ~~are~~ **is** predominately viewed from the water by boat and from a small private cobble beach located adjacent to applicant's parcel. The coastal wetland in this area is predominately ledge and large boulders; and difficult to access except during periods of low water as shown in the pictures in the application

Page (4 of 6) Section 6.B. Existing Scenic, Aesthetic, Recreational or Navigational Uses: (delete duplicative third paragraph in C.)

~~The coastal wetland in this area are predominately viewed from the water by boat and from a small private cobble beach located adjacent to applicants parcel. The coastal wetland in this area is predominately ledge and large boulders; and difficult to access except during periods of low water as shown in the pictures in the application.~~

The vote was taken pursuant to 38 M.R.S.A. Section 341-D(4) and 06-096 CMR Chapter 2, Rules Concerning the Processing of Licenses and Other Administrative Matters.

Board members Ernest Hilton, Matt Scott and Nancy Ziegler supported the motion.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard and Virginia Plummer opposed. Board members Nancy Anderson and Elizabeth Ehrenfeld were absent.

The Board voted on (5-3-0-2) a motion to grant the appeal submitted by Robert Morin on behalf of David and Valerie Hoffman and to direct the Department to revise the Board Order to grant the appeal for construction of a non-commercial pier in Winter Harbor with a condition that the structure be painted or stained a natural color to reduce the visual impact and to clarify that there would be no unloading, repair or loading of fishing gear from the pier.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard and Virginia Plummer supported the motion. Board members Ernest Hilton, Matt Scott and Nancy Ziegler voted opposed. Board members Nancy Anderson and Elizabeth Ehrenfeld were absent.

3. DOWNEAST LNG, DOWNEAST PIPELINE // ROBBINSTON Site Location of Development L-23432-26-A-N, Natural Resources Protection Act L-23432-TG-B-N, Air Emissions A-000960-71-A-N, Section 401 Water Quality Certification and Coastal Zone Management (Board decision on Downeast LNG's request to withdraw)
Staff: Cynthia S. Bertocci, BEP Executive Analyst
Staff: Jennifer Cayer, Bureau of Land and Water Quality
Staff: Jon Voisine, Bureau of Air Quality

The Board voted (8-0-0-2) on a motion to reconsider the vote made by the Board on October 25, 2007, concerning the request by Downeast LNG to withdraw its application. The vote was taken pursuant to 38 M.R.S. A. Section 341-D(2).

Board members Ernest Hilton, M. Wing Goodale, Richard Gould, Don Guimond, Virginia Plummer, Sue Lessard, Nancy Ziegler and Matt Scott voted to support the motion. Board members Nancy Anderson and Elizabeth Ehrenfeld were absent. [Note: Ms. Anderson and Ms. Ehrenfeld are not participating in the Downeast proceeding.]

The Board voted (3-5-0-2) on a motion to deny Downeast LNG's request to withdraw the applications; to suspend processing of the applications until on or before July 1, 2008 to allow the submission of an amendment to the applications regarding a new send-out pipeline route; and to request that the applicant take the necessary procedural steps to extend the time frame for the State to process the request for a CZMA consistency determination and Section 401 Water Quality Certification.

Motion Failed

The vote was taken pursuant to 38 M.R.S.A. Section 341-D(2).

Board members Ernest Hilton, M. Wing Goodale, and Virginia Plummer voted to support the motion. Board members Richard Gould, Don Guimond, Sue Lessard, Matt Scott and Nancy Ziegler voted opposed. Board members Nancy Anderson and Elizabeth Ehrenfeld were absent. [Note: Ms. Anderson and Ms. Ehrenfeld are not participating in the Downeast proceeding.]

The Board voted (5-3-0-2) on a motion to grant the withdrawal of the applications submitted by Downeast LNG for construction of a Liquefied Natural Gas Import Terminal and Send-out Pipeline. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(2).

Board members Richard Gould, Don Guimond, Sue Lessard, Matt Scott and Nancy Ziegler voted to support the motion. Board members Ernest Hilton, M. Wing Goodale, and Virginia Plummer voted opposed. Board members Nancy Anderson and Elizabeth Ehrenfeld were absent. [Note: Ms. Anderson and Ms. Ehrenfeld are not participating in the Downeast proceeding.]